EVIDENCE — HEARSAY — DECLARATION OF MENTAL STATE DISTINGUISHED FROM *RES GESTAE*. — In an action for alienation of affections by a wife against her husband's parents, the plaintiff was allowed to testify that two weeks after she received a letter in which the husband declared his separation, he said to her that the defendants had told him he was not the father of her child. *Held*, that this was error. *Gilmore* v. *Gilmore*, 173 N. W. 865 (S. Dak.).

The court based its decision on the ground that the statement was not part of the *res gestae*. It was undoubtedly right in holding that such declaration of the husband was not admissible as a verbal act, since it was not contemporaneous with the act of separation. See 3 WIGMORE ON EVIDENCE, § 1776. But there are two other classifications of declarations admitted in such cases to which the term *res gestae* is sometimes loosely applied: (1) A direct statement of mental condition *per se* an exception to the hearsay rule; (2) A statement proving mental condition by inference, to which, as Dean Wigmore points out, the hearsay rule is not applicable. See 3 WIGMORE, § 1715. See also Eustace Seligman, "An Exception to the Hearsay Rule," 26 HARV. L. REV. 146, 150. So in this case the alienation of the husband's affections and what caused such alienation are questions of states of mind, and the husband's declaration should have been admitted to prove them. *Bailey* v. *Bailey*, 94 Iowa, 598, 63 N. W. 341; *Williams* v. *Williams*, 20 Colo. 51, 37 Pac. 614. For the purpose of proving the defendants' agency in causing this state of mind the declaration comes within no exception to the hearsay rule and is therefore incompetent. *Elmer* v. *Fessenden*, 151 Mass. 359; *Rose* v. *Mitchell*, 21 R. I. 270, 43 Atl. 67. Of course evidence not admissible for all purposes may yet under proper instructions be admitted for the purpose for which it is competent. See 1 WIGMORE, § 13. This, it seems, would have been the proper ruling to have made in the principal case.

EVIDENCE — PRESUMPTION OF LEGITIMACY OF A CHILD BORN IN WEDLOCK — QUANTUM OF PROOF NECESSARY TO OVERCOME THE PRESUMPTION. — A, the wife of B, went to live with a former lover, C. Three hundred and four days later, A gave birth to a child, which both she and C recognized as C's. B had had no access in the interval between the separation and the birth. A and C were subsequently married. C died intestate and the child now claims as heir. It was contended that as the child was born in wedlock, he must be presumed to be the child of A's then husband, B. The court took judicial notice that two hundred and eighty days is the normal period of gestation, but that a period of three hundred and four is possible, although exceptional. *Held*, that the evidence, being beyond a reasonable doubt, overcomes the presumption of legitimacy. *In re McNamara's Estate*, 183 Pac. 552 (Cal.).

For a discussion of this case, see NOTES, p. 306, *supra*.

EVIDENCE — PROOF OF FOREIGN LAW — PRESUMPTION THAT THE STATUTORY *LEX LOCI* IS THE SAME AS THE STATUTORY LAW OF THE FORUM. —Under a statute in Idaho an action at law was the remedy to recover an award under the Workmen's Compensation Act upon default of the employer in payment. An action at law was brought in Washington to recover a defaulted award for an injury alleged to have been sustained in Idaho. Under the Workmen's Compensation Act of Washington the action at law for default in payment by the employer was barred. *Held*, that the action was barred. *Freyman* v. *Day et al.*, 182 Pac. 940 (Wash.).

The result was reached by presuming the law of Idaho to be the same as the law of Washington. As to presumptions of foreign statute law, in the absence of pleading and proof to the contrary, there are two views. One is that the *lex loci* is presumed to be the same as the *lex fori*. Cases often cited in support of this rule seem to support no broader doctrine than that the presumption will